

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MDL No. 3076

Case No. 1:23-md-3076-KMM

In RE

FTX CRYPTOCURRENCY  
EXCHANGE COLLAPSE LITIGATION

THIS DOCUMENT RELATES TO:

Law Firms

**DEFENDANT FENWICK & WEST LLP’S RESPONSE PURSUANT TO  
LOCAL RULE 7.8 TO PLAINTIFFS’ SUPPLEMENTAL AUTHORITY IN SUPPORT  
OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTIONS TO DISMISS**

Defendant Fenwick & West LLP responds to Plaintiffs’ notice of supplemental authority regarding *SEC v. Genesis Global Capital*, No. 23-287 (S.D.N.Y. Mar. 13, 2024). Dkt. 535.

*Genesis* involves allegations that Gemini, a crypto exchange, sold unregistered securities in violation of Section 5 of the Securities Act through its “Gemini Earn” program. After concluding that the Gemini Earn agreements were “securities” (slip op. at 25), the court held that the SEC adequately alleged Gemini was a “necessary participant or substantial factor” in the sale of those securities by “creating, advertising, and facilitating” the Gemini Earn program (*id.* at 28).

*Genesis* is inapposite because Plaintiffs have not alleged that Fenwick violated Section 5 of the Securities Act. Moreover, Plaintiffs have never alleged that Fenwick created, advertised, or facilitated any program to sell the alleged unregistered securities FTX offered through its Yield-Bearing Accounts (“YBA”) or native cryptocurrency token (“FTT”). And unlike this case, *Genesis* does not involve claims against *counsel* for an issuer of securities. This is important because, as

explained in Fenwick's motion, counsel cannot be held liable for a client's misconduct based on its provision of routine legal services. Dkt. 276 at 9–15, Dkt. 408 at 10–12, 15–17.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 21, 2024, I electronically filed the foregoing with the Clerk of Court using CM/ECF, and that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Nicole K. Atkinson  
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